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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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DUANE DRAKE TRACY,   No. 2:20-cv-01337-WBS-CKD

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            Plaintiff,

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     v.

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                                                MEMORANDUM AND ORDER RE: CITY
                                                OF MARYSVILLE'S MOTION TO
CITY OF MARYSVILLE, a municipal   DISMISS

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entity; OFFICERS JASON
GARRINGER, JEREMY LEMIRE, and

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HERBERT CULVER, and DOES 1-25,

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            Defendants.

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21   Plaintiff Duane Drake Tracy ("plaintiff") brought this

22 action against the City of Marysville ("the City"), Marysville

23 Police Sergeant Jason Garringer, Marysville Police Officers

24 Jeremy Lemire and Herbert Culver, and Does 1-25 seeking

25 compensatory and punitive damages against defendants for

26 violating civil rights under 42 U.S.C. § 1983. Before the court

27 is the City's Motion to Dismiss plaintiff's fourth cause of

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1   action.   ("Mot. to Dismiss") (Docket No. 4.)

2   I.   Factual and Procedural Background

3   According to plaintiff's complaint, on July 28, 2019,

4   plaintiff was suspected of disturbing the peace at a Starbucks in

5   Marysville, California in violation of California Penal Code §

6   415. (Compl. at ¶ 4.) (Docket No. 1.) Plaintiff is a homeless

7   member of the Navajo-Hopi Native American tribe. (Id. at p.2, ¶

8   14.) Sergeant Garringer and Officer LeMire of the Marysville

9   Police Department were dispatched to the call from Starbucks.

10   (Id. at ¶ 5.) Plaintiff had a cell phone in his right hand and

11   headphones in his ears. (Id.) Plaintiff was listening to loud

12   music and could not hear his surroundings. (Id.)

13   Sergeant Garringer pulled up in his marked patrol

14   vehicle approximately 6-7 feet away from plaintiff. (Id. at ¶

15   5.) He immediately exited his patrol vehicle in the middle of

16   "F" Street and slammed his outstretched arm to plaintiff's neck.

17   (Id.) Plaintiff immediately fell backwards onto the pavement and

18   struck his head on the pavement. (Id.) Officer LeMire then

19   released his K-9 unit on the Plaintiff. (Id. at ¶ 13.) The K-9

20   unit bit plaintiff's mid-section and shoulder several times.

21   (Id.) Plaintiff was transported to Rideout Memorial Hospital by

22   ambulance and treated for lacerations, dog bites, and head

23   injuries, including a possible concussion. (Id.)

24   Sergeant Garringer and Officers Culver and LeMire

25   contended that plaintiff willfully and unlawfully used violence

26   or a threat of violence to try to prevent or deter them from

27   performing their lawful duty. (Id. at ¶ 16.) On July 30, 2019,

28   the Yuba County District Attorney's Office filed a criminal

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complaint against plaintiff. (Id. at ¶ 20.) The criminal

complaint alleged that "plaintiff did unlawfully attempt by means

of threat or violence to deter or prevent Sergeant Garringer, who

was then and there an executive officer, from performing a duty

imposed upon such officer by law, or did knowingly resist by the

use of force or violence said executive officer in the

performance of his/her duty." (Id.) On January 15, 2020, Yuba

County District Attorney's Office dismissed this charge against

plaintiff. (Id. at ¶ 22.)

Plaintiff's complaint alleges that Sergeant Garringer

and Officers LeMire and Culver used excessive force in

effectuating plaintiff's arrest. (See id. at ¶¶ 2-9, 11-18, 23,

25.) Plaintiff also claims that they conspired or acted in

concert to have plaintiff falsely charged and prosecuted for

criminal attempt to disarm a police officer. (See id. at ¶ 26.)

Plaintiff contends that his race was a motivating factor in the

officers decision to use excessive force and maliciously

prosecute plaintiff with false charges. (See id. at ¶ 69.)

Based on these events, plaintiff alleges that the City of

Marysville is liable under Monell v. Department of Social

Services of the City of New York, 436 U.S. 658, 694 (1978), for:

(1) having an unconstitutional custom or policy, (2) ratifying

the decisions of the officers who caused the constitutional

violation, and (3) failing to adequately train the Marysville

police officers. (See id. at ¶¶ 28-34.)

II.   Discussion

Federal Rule of Civil Procedure 12(b)(6) allows for

dismissal when the plaintiff's complaint fails to state a claim

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1   upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6).

2   The inquiry before the court is whether, accepting the

3   allegations in the complaint as true and drawing all reasonable

4   inferences in the plaintiff's favor, the complaint has stated "a

5   claim to relief that is plausible on its face." Bell Atl. Corp.

6   v. Twombly, 550 U.S. 544, 570 (2007). "The plausibility standard

7   is not akin to a 'probability requirement,' but it asks for more

8   than a sheer possibility that a defendant has acted unlawfully."

9   Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "Threadbare

10 recitals of the elements of a cause of action, supported by mere

11 conclusory statements, do not suffice." Id. Although legal

12 conclusions "can provide the framework of a complaint, they must

13 be supported by factual allegations." Id. at 679.

14   A.   Monell Claim Against the City

15   In his fourth cause of action, plaintiff attempts to

16 plead a Monell claim against the City of Marysville. (Compl. at

17 ¶¶ 92-107.) Because 42 U.S.C. § 1983 does not provide for

18 vicarious liability, local governments "may not be sued under §

19 1983 for an injury inflicted solely by its employees or agents."

20 Monell, 436 U.S. at 694. "Instead, it is when execution of a

21 government's policy or custom, whether made by its lawmakers or

22 by those whose edicts or acts may be fairly said to represent

23 official policy, inflicts the injury that the government as an

24 entity is responsible under § 1983." Id.

25   Monell claims must contain sufficient factual

26 allegations to give fair notice to the opposing party and "must

27 plausibly suggest an entitlement to relief such that it is not

28 unfair to require the opposing party to be subjected to the

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1 expense of discovery and continued litigation." Starr v. Baca,

2 652 F.3d 1202, 1216 (9th Cir. 2011) To survive a motion to

3 dismiss, a plaintiff must do more than simply allege that a

4 Monell defendant "maintained or permitted an official policy,

5 custom, or practice of knowingly permitting the occurrence of the

6 type of wrongs" alleged in the complaint. See AE ex. rel.

7 Hernandez v. Cty. Of Tulare, 666 F.3d 631, 637 (9th Cir. 2012).

8 Facts regarding the specific nature of the alleged policy,

9 custom, or practice are required; merely stating the subject to

10 which the policy relates (i.e., excessive force) is insufficient.

11 See id. Following this rule, district courts have dismissed

12 complaints where a plaintiff alleged a single incident of

13 unconstitutional conduct as the basis for his Monell claim. See,

14 e.g., Wallace v. City of Santa Rosa, No. C 12-6451 MMC, 2013 WL

15 4675354, *2 (N.D. Cal. Aug. 30, 2013) (dismissing a Monell claim

16 rooted in allegations of an officer's use of excessive force

17 during a plaintiff's arrest and finding that a single incident is

18 insufficient to support a Monell claim based on inadequate

19 training or failure to discipline).

20   1.   Unconstitutional Custom or Policy

21   For an unwritten policy or custom to form the basis of

22 a Monell claim, it must be so "persistent and widespread" that it

23 constitutes a "permanent and well settled" practice. See Monell,

24 436 U.S. at 691. In pleading such a claim, the complaint must

25 "put forth additional facts regarding the specific nature of

26 [the] alleged policy, custom, or practice." See AE ex. rel.

27 Hernandez, 666 F.3d at 637. Here, the thrust of the allegations

28 against the City is that it allowed or promoted the type of

1 excessive force and race-based animus alleged elsewhere in the

2 Complaint. (See Compl. at ¶¶ 29-35.) However, plaintiff has

3 alleged no facts regarding an unconstitutional policy, custom or

4 practice, allegations of prior incidents, or facts which

5 demonstrate that the a alleged practice was of "sufficient

6 duration, frequency, and consistency such that the alleged custom

7 or practice has become a traditional method of carrying out

8 policy." See Harper v. Cty. Of Merced, 1:18-cv-005620-LJO-SKO,

9 2018 WL 5880786, *6 (E.D. Cal. Nov. 8, 2018). Instead, plaintiff

10 relies solely on boilerplate conclusions of customs, practices

11 and policies related to excessive force, racial discrimination,

12 and police misconduct. (See Compl. at ¶¶ 29-35.) These

13 allegations are insufficient to state a plausible, not merely

14 possible, claim for relief and are therefore insufficient. See

15 AE ex rel. Hernandez. 666 F.3d at 637.

16   2.   Ratification

17   The Ninth Circuit has "found municipal liability on the

18 basis of ratification when the officials when the officials

19 involved adopted and expressly approved of the acts of others who

20 caused the constitutional violation." Trevino v. Gates, 99 F.3d

21 911, 920 (9th Cir. 1996). Ratification "generally requires more

22 than acquiescence." Sheehan v. City and Cty. of San Francisco,

23 743 F.3d 1211, 1231 (9th Cir. 2014). However, plaintiff's

24 complaint lists conclusory allegations that the City "encouraged,

25 tolerated, ratified and acquiesced to a dangerous environment of

26 police brutality" and "tolerat[ed] the use of unconstitutional

27 force." (See Compl. at ¶ 28.) The complaint does not include

28 any factual allegations regarding any approval or ratification by

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1 the City or the basis for such approval. In Hicks v. Cty. of

2 Stanislaus, 1:17-cv-01187-LJO-SAB, 2018 WL 347790, *6 (E.D. Cal.

3 Jan. 10, 2018), the court dismissed a ratification claim where

4 the complaint contained "no factual allegations to support the

5 claim that the County approved, ratified, condoned, encouraged,

6 sought to cover up, and/or tacitly authorized the conduct. . . ."

7 Id. at *6. The plaintiff here has likewise failed to state a

8 cognizable claim of ratification under Monell.

9   3.   Failure to Train

10   In order to state a claim for failure to train under

11 Monell, a plaintiff must show that: (1) the existing training

12 program is inadequate in relation to the tasks the particular

13 officers must perform; (2) the officials have been deliberately

14 indifferent to the rights of the persons with whom the police

15 come into contact; and (3) the inadequacy of the training

16 "actually caused the deprivation of the alleged constitutional

17 right." Merritt v. Cty. of Los Angeles, 875 F.2d 765, 770 (9th

18 Cir. 1989). "[W]hen city policymakers are on actual or

19 constructive notice that a particular omission in their training

20 program causes city employees to violate citizens' constitutional

21 rights, the city may be deemed deliberately indifferent if the

22 policymakers choose to retain that program." Connick v.

23 Thompson, 563 U.S. 51, 61 (2011.)

24   Here, plaintiff has not provided any factual

25 allegations as to (1) how the City's officer training is

26 inadequate, (2) that the officials have been deliberately

27 indifferent to the rights of Marysville citizens, or (3) that the

28 inadequacy of the training was what actually caused the alleged

1   deprivation of plaintiff's constitutional rights. Accordingly,

2   the plaintiff has failed to state a cognizable claim of failure

3   to train under Monell. Because the complaint fails to state a

4   Monell claim under any theory, the court will dismiss the

5   complaint's fourth claim.

6   IT IS THEREFORE ORDERED that the City's motion to

7   dismiss plaintiff's fourth claim against the City under Monell,

8   (Docket No. 4) be, and the same hereby is, GRANTED.

9   Plaintiff has twenty days from the date this Order is

10 signed to file an amended complaint if he can do so consistent

11 with this Order.

12 Dated: November 30, 2020

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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